

1 MICHAEL BAILEY
2 United States Attorney
3 District of Arizona
4 KEVIN M. RAPP
5 Assistant U.S. Attorney
6 Arizona State Bar No. 014249
7 Email: Kevin.Rapp@usdoj.gov
8 Two Renaissance Square
9 40 N. Central Ave., Suite 1800
10 Phoenix, Arizona 85004
11 Telephone: 602-514-7500
12 *Attorneys for Plaintiff*

13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16 United States of America,

17 CR-19-00898-PHX-DLR (DMR)

18 Plaintiff,
19 v.

20 **JOINT STATUS MEMORANDUM**

21 David Allen Harbour,

22 Defendant.

23
24 This Court ordered that the parties submit a joint status report one week prior to the second
25 status conference scheduled for April 27, 2020. (*See* CR 55). This Court further ordered
26 that, unless the parties indicate a reason to hold the status conference, or the Court
27 determines that it is necessary after reviewing the parties report, the status conference will
28 be vacated. (*Id.*) The parties agree that the status conference can be vacated.

29
30 **I. Discovery Process**

31 Since the last status conference the United States has provided the Defendant
32 additional discovery that was obtained from seized digital devices. The Defense has
33 provided a hard drive and the government has provided a mirrored image of the devices.
34 The parties have recently conferred regarding the status of discovery issues.

1 **II. Jencks Act information**

2 Consistent with the Scheduling Order, if the United States obtains additional Jencks
3 Act material, it will disclose those materials to Defendants as soon as practicable or at least
4 thirty days prior to trial. (See CR 36; footnote 1 (“Any statements that have not been
5 adopted by a testifying witness will be disclosed thirty days prior to the firm trial date.”))
6 Witness interviews are ongoing and once those statements are adopted they will disclosed
7 consistent with the United States’ obligation.

8 **II. Additional Charges**

9 The United States has advised the defense that the Tax Division, U.S. Department
10 of Justice, has approved tax evasion charges against the Defendant. The Government has
11 provided the defense the Special Agent Report that details the underlying evidence in
12 support of those charges.

13 **III. Plea offer**

14 The United States has advised the defense that a plea offer including additional
15 charges will be forthcoming within 30-60 days.

16 **IV. Defense Position**

17 The Defense is aware of witness interviews that the United States has not disclosed
18 yet because the witnesses have not adopted the statements yet. The Defense recalls the
19 United States mentioning these interviews during the first status conference held on
20 February 3, 2020. The Defense expects the government to disclose these witness
21 interviews in a timely manner. The Defense is also aware of ongoing investigation by the
22 United States into issues that may or may not be related to the underlying facts of this case.
23 To the extent this ongoing investigation produces any evidence related to the charges Mr.
24 Harbour currently faces, the Defense expects the United States to promptly disclose any
25 such evidence.

26 The Defense provided a hard drive to the United States so that the United States
27 could produce mirror images of Harbour’s devices to the Defense. After obtaining the hard
28 drive with the mirror images from the United States, the Defense realized that it could not

1 view the majority of the content on the hard drive because it did not have the requisite
2 software on its computers. The Defense promptly contacted a third-party vendor who had
3 the necessary software and could run searches and compile data for the Defense. The
4 Defense is in the process of securing the third-party vendor's services. Once the Defense
5 obtains full access to the data on the hard drive, the review of such data will likely take
6 several weeks, and possibly a couple of months, due to the extraordinary amount of data
7 on the hard drive.

8 | **V. Meet And Confer Regarding Discovery**

9 When requested by defense counsel, the United States is willing to meet with
10 defense counsel telephonically or in person to further review discovery and answer any
11 questions about specific discovery relevant to their client.

Respectfully submitted this 17th day of April, 2020.

**MICHAEL BAILEY
United States Attorney
District of Arizona**

s/ Kevin Rapp
KEVIN M. RAPP
Assistant U.S. Attorney

Certificate of Service:

21 I hereby certify that on this date, I electronically transmitted the attached document
22 to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of
Electronic Filing to CM/ECF registrants in this case.

26 s/ Norma Hernandez
U.S. Attorney's Office